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SUBJECT: COLOMBIA -- 2009 SPECIAL 301 REVIEW

REF: STATE 8410

¶1. (U) SUMMARY. Post recommends Colombia remain on the Special 301 Watch List. The Colombian Government has made substantial efforts over the last year to combat the theft of intellectual property. The penalties for pharmaceuticals counterfeiting have been stiffened. The level of cooperation both within the Government of Colombia and between the GOC and the private sector on IPR issues has increased. Nonetheless, the incidence of IPR violations is still high due to the relatively small amount of resources devoted to IPR protection and a judiciary that does not consider IPR protection a priority. END SUMMARY.

IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS

¶2. (U) Intellectual property lawyers generally agree that Colombia complies with its international obligations under TRIPS and other agreements. However, the international pharmaceutical industry has expressed concerns that the difficulties associated with obtaining patents for improvements and second uses may constitute a violation of its TRIPS commitments.

DATA PROTECTION

¶3. (U) Colombian decree 2085 of 2002 provides a five-year protection for product and patent process data for pharmaceuticals. The industry has raised concerns over obstacles to obtaining preliminary injunctions before a potentially patent-infringing product enters the market. Colombia's data protection norm for the agrochemical sector provides five years of data protection. Industry has expressed a desire for a longer period of data protection for agrochemical products, and under the U.S.-Colombia Trade Promotion Agreement (U.S.-CTPA), this period would be extended to ten years.

ENFORCEMENT

¶4. (U) Colombian authorities conducted 857 raids and seized 2,290,537 pirated sound recordings, 1,796 CD burners and 567 DVD burners. Industry is generally pleased with enforcement actions by police and prosecutors but notes that these actions are often limited to Bogota and Medellin.

¶5. (U) GOC and industry contacts expressed concern over the lack of basic IPR knowledge on the part of judges. In particular, they cited an April 30, 2008 Supreme Court decision that "the illegal download of music to personal computers is something insignificant that cannot be considered a crime." In general, the judiciary does not

fully understand the importance of IPR enforcement. The Commercial Service and the U.S. Patent and Trademark Office delivered an enforcement seminar in June 2008 aimed at training 70 judges and prosecutors on IPR issues. One judge noted that he had 3,000 pending cases and "finally understood what he needed to do." Seminar participants lamented the lack of funds, personnel and training for enforcement; several noted the difficulties associated with not having designated judges hear IPR cases.

INTERNET PIRACY

¶16. (U) Internet piracy is a significant and growing concern in Colombia. Industry estimates that internet piracy of music accounts for virtually all of the internet music market. There is virtually no punishment of internet IPR violators in Colombia. The U.S.-CTPA would introduce more stringent measures to fight internet piracy.

PRODUCTION, IMPORT AND EXPORT OF COUNTERFEIT GOODS

¶17. (U) The importation of counterfeit and pirated goods linked to illegal armed groups, criminal gangs and narco-traffickers in Colombia is a major concern. Authorities believe that narco-traffickers import contraband as a way of laundering drug profits. Industry has applauded GOC efforts to halt the importation of counterfeit and pirated goods, including increased coordination among different agencies responsible for inspections. Nonetheless, limited resources sometimes impede basic elements of interdiction, such as warehousing confiscated items.

¶18. (U) Importation of counterfeit liquor in the northern department of La Guajira remains a problem. In 2008, Colombia increased penalties for counterfeit medicines and food from 4-8 years to 6-12 years, essentially making it a jailable offense.

OPTICAL MEDIA PIRACY

¶19. (U) Optical media piracy remains a serious issue. Industry estimates that pirated CDs accounted for 71 percent of the physical music market. The figure is even higher outside of the larger cities where raids are concentrated.

BOOK PIRACY

¶10. (U) The illegal photocopying of textbooks, books, and journals, particularly in and around universities continues to be a grave problem in Colombia. Government decree 1070 of April 7, 2008 requires that educational institutions and photocopy companies obtain the authorization from copyright holders' representatives before permitting reproduction of their works.

GOVERNMENT AND BUSINESS SOFTWARE

¶11. (U) The GOC requires that all software government entities procure and use be properly licensed. In addition, law 603 of 2002 requires Colombian companies to certify their compliance with copyright laws. GOC contacts say there has been greater enforcement of this law in 2008. Industry estimates that in 2008, 58 percent of the software market was pirated, down slightly from 59 percent in 2007 and translating into 127 million dollars in lost revenue.

WIPO TREATIES

¶12. (U) Colombia ratified the 1996 WIPO Copyright Treaty and WIPO Performance and Phonograms Treaties in 2002.

BROWNFIELD